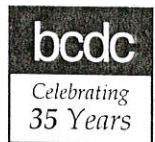


SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

FIFTY CALIFORNIA STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111
PHONE: (415) 352-3600
<http://ceres.ca.gov/bcdc/>



July 26, 2000

Port of Oakland
Commercial Real Estate
70 Washington Street, Suite 205
Oakland, California 94607

ATTENTION: Julie Braun, General Manager
Oakland Portside Associates

SUBJECT: Apparent Violations of BCDC Permit No. 19-85(A), Through Amendment No. Fifteen; BCDC Permit No. 19-85(B), Through Amendment No. Nine (Enforcement File No. ER00-54; **ER99-74**)

Ladies and Gentlemen:

I am writing this letter to inform you of several apparent violations to BCDC Permit No. 19-85 (A), through Amendment No. Fifteen, and 19-85(B), through Amendment No. Nine. I will first address the apparent violations to BCDC Permit No. 19-85(A). As we discussed during our telephone conversation on July 18, 2000, I received a letter from you dated June 14, 2000, which apparently was a copy of a letter addressed to Michael Stagg at Scott's Restaurant, related to prohibiting private ceremonies in areas reserved for public access, and more specifically, expressing your disappointment at the occurrence of a large wedding party (120-150 people) on the public access walkway, on June 11, 2000.

According to Joe LaClair, Senior Planner for BCDC, Michael Stagg called BCDC, prior to holding the June 11, 2000 wedding, inquiring whether Scott's could conduct weddings in the shoreline public access areas near the restaurant. Mr. LaClair told Mr. Stagg that the permit and plans did not authorize such events, and that Scott's only had permit authorization for events in the public pavilion, with prior staff approval. He also indicated that the Port had the only permit for events in the public access areas, but had not requested authorization for weddings. Mr. LaClair specifically told Mr. Stagg that the June 11, 2000 wedding would not be permitted and was too large for any public area except for the pavilion.

As you are probably aware, BCDC Permit No. 19-85(A), through Amendment No. Fifteen has special conditions that limit the uses of the public access areas (attached). Special Condition II-B-1 requires that the areas be made available to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. This condition also requires that, if the permittee wishes to use the public access area for other purposes than those described in Special Condition II-B-2, the permittee must obtain prior written approval by or on behalf of the Commission. Not only did staff not provide any verbal or written approval for this event, the staff specifically told Mr. Stagg the wedding event would not be authorized.

Special Condition II-B-2-a provides that the public access areas may be used "for regularly scheduled, publicly oriented events, including but not limited to concerts, parades, fairs, festivals, a weekly farmers market, and a limited number of events charging paid admission, but not including restaurant sponsored private banquets." A large private wedding party is not considered a publicly oriented event and is not consistent with these permissible uses.

Additionally, this condition provides that "each event must receive prior written approval by the Commission and should be generally open to the public, should maintain a continuous band of public access to and along the shoreline at all times, should not discourage any persons or groups from attending approved events, should take advantage of the unique Bay setting, and should not unduly impede public access to and along the shoreline." According to your June 14, 2000 letter to Mr. Stagg, the wedding event was the largest private event security had ever seen on the public access walkway, covering the entire deck from end to end. The occurrence of this event appears to be inconsistent with all of the above requirements. It was not approved, not open to the public, the public access walkway was inaccessible to pedestrians as it was apparently blocked by delivery/service vehicles, and the visiting public and private boaters were also apparently shut out from accessing the area. Furthermore, this condition requires that the failure to maintain continuous public access to and along the shoreline is grounds for discontinuing the activities.

This condition also requires, before December 15 of each year, the submittal to BCDC for staff review and approval of a list and proposed schedule of all proposed events for the next year, a site plan showing the location of events, and 30 days prior to annual events listed in the schedule, a written description of the proposed public access area use. As we discussed, you indicated that this schedule was both submitted and approved. Unfortunately, I cannot find either the schedule or the approval letter in our files. Could you please send us a copy of both for our records? As I understand from our conversation, the June 11, 2000 wedding event was organized by Scott's and was not on the approved schedule.

Special Condition II-B-2-c allows for authorization for a limited number of "last-minute" events, provided that an authorization request is submitted at least 10 days prior to the event and a site plan depicting the location of the event is submitted. BCDC staff may refuse authorizations for excessive last-minute event requests. The staff made it clear to Mr. Stagg that the event would not be permitted.

Resolution

To resolve these apparent violations, first, please do not hold or otherwise allow any additional events in the public access areas without first getting written approval from BCDC. Second, the law provides for the imposition of administrative civil penalties for violations of the McAteer-Petris Act, including the violation of any term or condition of a permit issued by the Commission. Please be aware that any further unauthorized use of the public access areas could subject you to the issuance of a cease and desist order which could impose substantial civil penalties.

BCDC Permit 19-85(B), Through Amendment No. Nine

As we also discussed during our telephone conversation on July 18, 2000, we received on November 12, 1999, copies of the approved third and fourth quarter (1999) schedules that were submitted to you from Scott's Restaurant for the private use of the public pavilion. These schedules were approved by Oakland Portside Associates on November 10, 1999, and according to Alice Rose were determined to be in compliance with the guidelines in the permit. Upon review of the schedule, however, we determined that there appeared to be an excess number of weekend events permitted during the summer (third quarter) and winter months (fourth quarter), making it inconsistent with the permit requirements. According to BCDC Permit No. 19-85(B), Special Condition No. II-B-2-c, Event Schedule Reporting, Scott's shall provide the Port of Oakland with quarterly schedules for private events and the Port of Oakland shall provide BCDC with a summary of events scheduled for

the previous year by March 1 of each year. This condition also requires that the events schedule shall not be approved by the Port of Oakland unless it is consistent with the parameters for scheduling specified in Exhibit A to the permit. Exhibit A (attached) provides guidelines for the public and private use of the pavilion. It specifies that, during the summer months (May through October), the number of weekend days/nights that the pavilion should be made available on average per month for private use is 3, or 33%. During the winter months (November through April), the number of weekend day/nights that the pavilion should be made available on average per month for private use is 4, or 40%.

The third quarter schedule had three weekend events in July, five in August and five in September, an excess of four events. The fourth quarter schedule had three weekend events in October, four in November, and five in December, an excess of one event. As indicated in Special Condition No. II-B-2-d, the holding of an event within the pavilion or public access plaza not listed in the schedule of events, or the approval of a schedule of events that is inconsistent with the guidelines in Exhibit A, shall be considered an activity undertaken without Commission authorization and subject to standardized civil penalties.

Resolution

To resolve this apparent violation, first, please ensure that all future events scheduled for the pavilion are consistent with the guidelines in Exhibit A. Second, a review of the permit indicates that the "Guidelines For the Private Use of the Public Pavilion" appear to have never been reviewed. The Port, Scott's and BCDC staffs need to review and revise the guidelines for the following reasons. First, the Commission was told by Ray Gallagher from Scott's that "most private events would last from four to six hours" (Design Review Board Meeting Minutes of October 3, 1994). The events approved in the schedule, however, have averaged 8 hours and have sometimes exceeded nine hours, which means that the total times for the tent to be up and to be taken down are extended, thus limiting public views and discouraging the public from accessing the areas more than the Commission had intended. We believe that an event that lasts longer than four to six hours should be counted as two events. We may need to revise the guidelines to define what constitutes "an event." Second, the guidelines could be revised to address "event sharing." For example, the average number of events in a month might be exceeded if, in future months, especially during the high use period, there are fewer events. In that way, you would still meet the overall requirement for private use of the pavilion.

Thank you for your cooperation to date and for your attention to these matters. Please feel free to contact me at (415) 352-3622 or email lisab@bcdcc.ca.gov if you have any questions.

Sincerely,



LISA BENNETT
Enforcement Program Analyst

Enc.
LB/mm

cc: Port of Oakland, Attn: Joseph Wong
Scott's Restaurant, Attn: Michael Stagg

PERMIT NO. 19-85(A)

(Issued on March 13, 1986, As
Amended through June 23, 1998)

AMENDMENT NO. THIRTEEN

(Exclusive of Amendment Nos. One,
Two, Three and Eleven)

Port of Oakland

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Gianelli, Architects. The Ferry Terminal Promenade and the improvements for access to the Historic Lightship *Relief* and the Presidential Yacht *Potomac* authorized in Material Amendment No. Ten shall generally conform to the plans entitled "Permanent Berthing Facilities for the Presidential Yacht *Potomac* and Lightship *Relief*/Improvements to Ferry Terminal," prepared by the Port of Oakland and Hansen Murakami Eshima Architects and Planners, dated September 26, 1996, as modified through February 12, 1997 (~~see Exhibits H, I and J~~). The marina reconstruction and the improvements within the public access areas adjacent to the Central and East Basins shall generally conform with the plans entitled, "Jack London Square Marina Reconstruction, Design Development Phase (35% submittal)," prepared by the Port of Oakland and GKO Messinger and Associates, dated September, 1997, with the exception that no bollards are permitted within the public access areas. No material changes shall be made thereafter to these plans without first obtaining written approval of the change(s) by or on behalf of the Commission.

5. **As-Built Plans.** The permittee shall submit as-built plans of the existing public access improvements in the plaza adjacent to the El Torito and Old Spaghetti Factory restaurants which describe, in detail, existing public access improvements.

B. Public Access

1. **Area.** The approximately ~~2.33~~ 2.86-acre (~~105,062~~ 124,750-square-foot) area along the entire approximately 1,875-lineal-foot shoreline of the site including ~~85,339~~ 92,540-square feet of the shoreline band and ~~18,960~~ 26,960 square feet of fill in the Bay as generally shown in the attached exhibits on Exhibits "A," "B," "C," "D," and "G" shall be made available to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes as more specifically described in paragraphs II-B-2. If the permittee wishes to use the public access area for other than those purposes expressly delineated in paragraph II-B-2, the permittee must obtain prior written approval by or on behalf of the Commission. The approximately 4,742-square-foot area constructed to access the Historic Lightship *Relief* shall be made available to the public pursuant to Special Condition II-B-8 below.
2. **Permissible Uses.** The area required for public access shall be used and maintained for public purposes as outlined in Special Conditions II-B-1 and II-B-7 with only the following exceptions:
 - a. The permittee may use the public access areas for regularly scheduled, publicly-oriented events, including but not limited to concerts, parades, fairs, festivals, a weekly farmers market, and a limited number of events charging paid admission, but not including restaurant sponsored private banquets. Each event must receive prior written approval by or on behalf of the Commission and should be generally open to the public, should maintain a continuous band of public access to and along the shoreline at all times, should not discourage any persons or groups from attending approved events, should take advantage of the unique Bay setting, and should not unduly impede public access to and along the shoreline. Any additional maintenance, clean up or other maintenance or improvements required as a result of

PERMIT NO. 19-85(A)

(Issued on March 13, 1986, As
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(Exclusive of Amendment Nos. One,
Two, Three and Eleven)

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approved events shall be performed immediately. Excessive soiling of the public access areas or inadequate maintenance of public access facilities, or failure to maintain continuous public access to and along the shoreline are grounds for discontinuing the activities authorized pursuant to sections I-A-2-h through j.

On or before December 15th of each year, the permittee shall submit the following for review and approval by or on behalf of the Commission:

- (1) a list and proposed schedule of all proposed events for the next year;
 - (2) a site plan showing the location of each proposed event;
 - (3) at least 30 days prior to annual events listed in the schedule provided pursuant to this Special Condition, the permittee shall provide a brief written description of the proposed use of the public access areas, e.g. any erection of booths, tables or other temporary elements, the approximate amount of the public access area to be utilized, and the duration of each event, and a site plan showing the location of the event and all temporary structures. These plans shall be reviewed within 15 days of submittal pursuant to Special Condition II-A.
- b. The permittee may locate and use, within the required public access areas, retail kiosks that shall total no more than 500 square feet as shown in Exhibit BB the attached exhibits. Approval of individual kiosks shall be pursuant to Special Condition II-A, Specific Plan Review and consistent with descriptive materials provided in the application for Amendment No. Seven;
 - c. In addition to the events authorized pursuant to Special Condition II-B-2-a, the permittee may obtain authorization for a limited number of "last-minute" events. Request for authorization shall be submitted at least 10 days prior to the event. For each "last-minute" event, the permittee shall submit a plan depicting the location of the event pursuant to Special Condition II-B-2-a, prior to the staging of the event. The staff shall review the permittee's request for "last-minute" events within 3 days of submittal and may refuse authorizations for excessive last-minute event requests.
 - d. The uses of public access areas authorized by Special Condition II-B-2 shall terminate at the end of seven years from the date of Amendment No. Seven. The Commission will consider extensions of the non-public uses permitted by subsections II-B-2-a through II-B-2-c and may renew these uses only if the permittee can demonstrate to the satisfaction of the Executive Director that the permittee has complied with Special Condition II-B and all non-public use or uses authorized for the seven-year period have not adversely affected the public's use of the public access areas.
3. **Public Access Barge and Launching Float Use.** The 1,600-square-foot, relocated barge and 175-square-foot launching float shall be used primarily for public launching of small boats, swimming access and other public access uses. The permittee is also

GUIDELINES FOR PRIVATE USE OF PUBLIC PAVILION

Permit No. 19-85--Exhibit E

	Public Use of the Pavilion	Private Use of the Pavilion	Percentage of Private Use of Pavilion during high use periods (weekend days/nights)
Percentage of use per year.	80%	20%	
Number of days available per year for use of the public pavilion.	292	73	
No. of weekend days/nights* to be made available for use of the Pavilion on average per month from May through October	6	3	33%
Minimum no. of weekend days/nights for Public Use in any month	3		
No. weekend days/nights* to be made available for use of the Pavilion on average per month from November through April	5	4	40%

*weekend nights = Friday and Saturday;

weekend days = Saturday and Sunday

1. Scott's will submit a quarterly calendar of proposed private events for Port approval. The events calendar will include a time estimate of each individual event, including set-up and take-down times consistent with each event.
2. The Port will transmit a copy of the approved quarterly events calendar to BCDC staff for its information.
3. The Port will closely monitor the use of the pavilion for private events to ensure compliance with the 20-percent maximum private use limit.
4. The Port will not approve more than two consecutive private events at any time.
5. Scott's will coordinate with the Port's Marketing Director to eliminate conflicts between private events and any public events.
6. Scott's will not lower the fabric curtains prior to one (1) hour before a private event and will retract the curtains within one (1) hour after a private event.
7. Scott's will be responsible for the repair and maintenance of the pavilion structure, the outdoor tables and chairs and the binoculars.
8. Scott's will be responsible for the daily clean-up of the area beneath the pavilion structure.
9. The Port, Scott's and BCDC staff will review these guidelines within six (6) months of the first private event to determine if additional guidelines are necessary.

Permit No. 19-85(B)
Amendment No. Nine
Exhibit A